

SECTION-BY-SECTION ANALYSIS

ANCSA SETTLEMENT TRUST REMEDIAL TAX
LEGISLATION

Federal law authorized in 1988 Alaska Native corporations to use their own funds to establish settlement trusts to "promote the health, education and welfare of its beneficiaries and preserve the heritage and culture of Natives." Although Alaska Native corporations are not governments, they do help provide certain social services as contemplated in the Alaska Native Claims Settlement Act (ANCSA) to their shareholders. This proposed legislation corrects several deficiencies in and clarifies present law while providing an elective tax structure to lessen the current impediments to the establishment and maintenance of these trusts. The following is a section-by-section analysis of the legislation:

Section 1 is the Short Title of the bill.

Section 2(a) (identification of ANCSA settlement trust as eligible to elect tax exempt status). This provision of the legislation provides a partial exemption from income taxes for Alaska Native Settlement Trusts which make a one-time election. The partial exemption is accomplished by adding settlement trusts as entities which can be tax exempt under Tax Code section 501(c), and then requiring that to qualify for the tax exemption a settlement trust must currently distribute at least 55% of its annual taxable income.

Section 2(b) (detailing new 501(p) elective tax treatment). New subsection 501(p) has six paragraphs.

Paragraph (1) describes the taxation of both electing and non-electing settlement trusts. Contributions to electing trusts are not currently taxable to the beneficiaries; by contrast, current IRS ruling policy is that contributions to non-electing trusts are currently taxable to beneficiaries to the extent of corporate earnings and profits. Electing trusts will be tax exempt if they currently distribute 55% of their income and if transfers of trust units are restricted similarly to transfers of ANCSA corporate stock. Eventual distributions to beneficiaries of the trust's exempt income, as well as any other distributions by the electing trust, are taxed to the beneficiaries at ordinary income rates. Non-electing trusts remain subject to present law.

Paragraph (2) provides the basic mechanism by which a settlement trust elects tax exemption. Paragraph (3) imposes a rule to assure that primarily Alaska Natives receive the benefits of this elective tax exemption, just as the Alaska Native Claims Settlement Act (43 USC 1601 et seq.) limits transferability of the stock in Native corporations to assure that the benefits of stock ownership accrue primarily to Alaska Natives. Under this bill, if at any time the beneficial interests in an electing trust become transferable in a manner which would be prohibited if those beneficial interests were ANCSA stock, the trust becomes permanently ineligible to continue the election. Also, a one-time penalty tax equal to the highest marginal tax rate under section 1(e) times the asset value of the trust is imposed. This tax can be avoided by a distribution of the trust assets to the beneficiaries before the close of the taxable year in which the trust beneficial interests became transferable. Paragraph (3) also causes the foregoing rule to apply if a Native corporation which is not governed by the non-transferability rules makes a transfer to an electing settlement trust.

Paragraph (4) imposes an annual distribution requirement (55% of taxable income) on electing trusts. The consequence of a failure to make these annual distributions is a non-deductible tax at ordinary income rates upon

the income which should have been distributed.

Paragraph (5) describes the taxation of the beneficiaries of both electing and non-electing trusts. All distributions to a beneficiary of an electing trust produce ordinary income. But for this rule, the character of income earned by the trust would flow out to the beneficiaries and distributions of capital and accumulated income would be tax free to the beneficiaries. Distributions by a non-electing trust are taxable to the extent required by Subchapter J of the Tax Code, which generally limits beneficiary taxation to the amount of income of the trust and flows the character of the trust's income out to the beneficiary.

Paragraph (6) provides certain definitions applicable to the election.

Section 2(c) (Withholding on distributions by electing trusts). Present law does not require any tax withholding on trust distributions. Many Alaska Natives have income levels so low that they are not required to file income tax returns. In such circumstances, requiring withholding on distributions increases the administrative burden to both the government and settlement trusts since these Alaska Natives would have to apply for refunds of over collected taxes. Therefore, under this legislation, withholding on distributions by any settlement trust is required to the extent the annualized distributions of the Trust exceed the basic standard deduction and personal exemption amounts under the Tax Code.

Section 2(d) (Modify information reporting requirements.) Under present law, settlement trusts report to their beneficiaries on Form K-1s, which with extensions, can be sent as late as October of the year following the taxable year to which the information relates. Much of Form K-1 is inapplicable to the typical settlement trust and can be confusing to beneficiaries. Native corporations, by contrast, have long reported to their shareholders on Form 1099s which must be sent by January 31 of the following year. This section requires all settlement trusts to provide annual information on Form 1099s (rather than on Forms K-1s). In the case of a non-electing settlement trust, the Form 1099 would differentiate among the different types and character of income being distributed. Form 1099 reporting would be in lieu of the requirement that a non-electing settlement trust attach a copy of beneficiary Form K-1s to its own tax return.

Section 2(e) (effective date). In general, the provisions of the bill are applicable to taxable years ending after the date of enactment of the bill and to contributions to trusts made after such date.

CRISIS IN KOSOVO (ITEM NO. 12) REMARKS BY CHRISTOPHER SIMPSON OF AMERICAN UNIVERSITY

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 24, 1999

Mr. KUCINICH. Mr. Speaker, on June 10, 1999, I joined with Representative CYNTHIA A. MCKINNEY, Representative BARBARA LEE, and Representative JOHN CONYERS in hosting the fifth in a series of Congressional Teach-In sessions on the Crisis in Kosovo. If a lasting peace is to be achieved in the region, it is essential that we cultivate a consciousness of peace and actively search for creative solutions. We must construct a foundation for

peace through negotiation, mediation, and diplomacy.

Part of the dynamic of peace is a willingness to engage in meaningful dialogue, to listen to one another openly and to share our views in a constructive manner. I hope that these Teach-In sessions will contribute to this process by providing a forum for Members of Congress and the public to explore options for a peaceful resolution. We will hear from a variety of speakers on different sides of the Kosovo situation. I will be introducing into the CONGRESSIONAL RECORD transcripts of their remarks and essays that shed light on the many dimensions of the crisis.

The presentation is by Christopher Simpson, an associate professor specializing in national security, new media and the psychological warfare at American University School of Communication here in Washington. He is the author of four books on international human rights law, genocide and national security, including *The Splendid Blond Beast* (1993) and *The Science of Coercion* (1994). His work has won many awards including the National Jewish Book Award, the Investigative Reporters and Editors Prize, the Cavior Prize for Literature and the 1997 Freedom Award.

PRESENTATION BY CHRISTOPHER SIMPSON,
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Thank you for inviting me to this briefing, and thanks especially to Rep. Dennis Kucinich for his leadership in these issues.

I'm going to discuss three main ideas. First, I'll look briefly at the most basic principles of international law concerning war.

Second, I'll bring forward new information on what is known as "infrastructure warfare," which is today central to the way that the United States and NATO choose targets for aerial attacks. Bombing and cruise missile attacks, as you know, have been the primary U.S. strategy in Yugoslavia and in the on-going, de facto war with Iraq. In Yugoslavia, infrastructure warfare targets have thus far included the electrical power generation and distribution grid for the entire country; sewage treatment and water purification plants in at least three cities (and the destruction of those plants, by the way, affects not only those cities, but everyone downstream from the city as well); natural gas pipelines and pumping stations; the Yugoslav federal reserve; and purely economic targets of no military consequence in towns and villages that have no military barracks, storage facilities or any other known military significance.

This leads me to my third point. "Infrastructure warfare" has become in part a means of making war on Yugoslavia's civilian population. In many cases it has had a minor or negligible military effect compared to the damage it has done to civilians. As such, these tactics skate very close to becoming a war crimes under international treaties and the United States military's own definitions of such crimes.

In fact, a recent U.S. presidential commission defined the intentional destruction of urban infrastructures such as electrical power grids, water treatment plants and banking networks as a form of criminal "terrorism"—that's their word—if used against U.S. cities.¹

See footnotes at end of article.

This is called "terrorism" at home and is presently being used by the administration to create or expand repressive federal laws authorizing political surveillance of people in the United States, particularly those who use computer networks.

But interestingly enough, the Defense Department's representative on that presidential commission has been simultaneously

engaged in designing U.S. Air Force offensive tactics for destroying precisely the same type of targets abroad.² When one compares the U.S. government's various definitions of infrastructure warfare side by side, we find that criminal "terrorists" use car bombs to attack the basic urban services necessary to sustain life and maintain order, while the U.S. Air Force prefers to strike the identical types of targets with cruise missiles and bombs dropped from B-52's. Not surprisingly, the Air Force generally does a more thorough and devastating job in eliminating its target.

The most basic principle of international law concerning warfare is to separate non-combatant civilians from the punishment of war to the greatest extent possible, taking into account what are termed legitimate military objectives. This is much easier said than done, of course. Nevertheless, the United States, all the NATO states, Yugoslavia, Russia and more than 100 other nations all agree, at least on paper, that making war on civilians is in almost every circumstance a *prima facie* war crime. This includes, by the way, aerial attacks on civilian economic centers carried out with the aim of undermining civilian morale or inducing a country to overthrow an established government.³

These elementary principles are codified with increasing specificity in the Hague Convention of 1907, the United Nations charter, the 1949 Geneva conventions, the unanimously adopted UN resolution on Respect for Human Rights in Armed Conflict of 1969 (Resolution 2444), similar protocols adopted in 1977 and, not least, in the on-paper rules of the U.S. Air Force itself.⁴

Today, NATO representatives often speak of what they term the relatively low degree of "collateral damage" to civilians caused by modern bombing and cruise missile attacks on Yugoslavia. Those claims should be disputed.

But we should also recognize that NATO representatives use the collateral damage argument to obscure the more telling point, which are tactics and target selection practices that are clearly on the record. Wanton destruction of non-combatant civilians or their ability to sustain life is a *prima facie* war crime, and NATO knows it.

Let me give you an example. Virtually all experts agree that intentionally poisoning civilian water wells or food processing centers is in most circumstances a war crime. Poisoning a farmer's well may kill or incapacitate a dozen or more people. Yet the infrastructure warfare tactic of destroying sewage treatment plants in Baghdad or Belgrade spreads disease to thousands or even tens of thousands of people at a time, and is apparently intended to do so because the results of destroying such plants are well known. Most of the Western news media, the Pentagon and much of the U.S. Congress refuse to come to grips with the reality that this tactic poisons civilian water supplies, spreads cholera and helps spread other epidemic diseases, and is particularly dangerous to civilian children and the elderly, whose death rate increases dramatically in the wake of such attacks. The journal *Foreign Affairs*—which is certainly not a hotbed of radicalism—reports in its current issue that the destruction of water works in Baghdad combined with on-going sanctions has—quoting now—"contributed to hundreds of thousands of [civilian] deaths. By 1998 Iraqi infant mortality had reportedly risen from the pre-Gulf War rate of 3.7 percent to 12 percent. Inadequate food and medical supplies, as well as breakdowns in sewage and sanitation systems and in the electrical power systems needed to run them, reportedly cause an increase of 40,000 deaths annually of children under the age of five and of 50,000 deaths annually of older Iraqis."⁵ Neverthe-

less, this infrastructure warfare tactic remains widely used today when NATO selects targets in Yugoslavian cities.⁶

Another example. Intentionally bombing a hospital is almost certainly a war crime, and everyone knows it. Yet bringing down the electrical grid of any city produces an identical result at all of the hospitals in a city, without physically hitting the hospital buildings. The hospital refrigerators that hold medicine fail, destroying antibiotic drugs, vaccines and other medicines; soon it becomes impossible to sterilize surgical tools; bedridden patients die without clean water to drink or, for that matter, without clean water for the staff to use to wash the floors. That's because hospitals can rapidly become vectors for spreading disease if they are not kept clean. The city's hospitals have been effectively damaged just as surely as if they had been directly bombed. In fact, considering what has taken place in Baghdad in the eight years since the Gulf War took place, it may take considerably longer to return such hospitals to safe operation.

As with any issue in international law, things are often more complicated than they seem at first. NATO's military rationale for the destruction of Belgrade's or Novi Sad's infrastructure is that the attacks degrade the Milosevic government's ability to wage its own war against civilians in Kosovo, and they are therefore legitimate military targets. Preventing Yugoslav military and paramilitary atrocities in Kosovo, in turn, provide NATO's legal justification for what would otherwise be a transparently illegal attack on a sovereign state. If past experience is a guide, it is unlikely that NATO commanders responsible for these attacks will ever be regarded as anything other than heroes in the Western news media.

Yet Congress should look very closely at such claims. First, the mere fact that something might be a military target does not provide legal grounds for destroying it. Even the destruction of infrastructure in Belgrade, which is ostensibly the seat of the Milosevic government, has produced few military results compared to the damage it has wrecked on purely civilian activities. That is because most of the national security apparatus of the Milosevic government dispersed from the capitol city well before the bombing began. Such dispersal of key security assets is a well established contingency for virtually every modern military power, including the United States.

I'd like to conclude with these remarks. I hope that some of you will point out that it is all well and good to oppose the NATO bombing campaign. But what about the other atrocities, including massacres of Albanian men killed by certain Yugoslav military units and paramilitary organizations? What about the mass deportations of civilians from Kosovo and the examples of gang rapes of Albanian refugee women? How do you propose to stop those crimes?

First of all, there is no sound-bite solution to the crisis in the Balkans, no matter what Madeline Albright may say on the Sunday morning talk shows. People who say they have a simple solution are either ignorant or attempting to deceive you. Second, the cease fire plan announced today should be welcome news for all people of good will. But once the euphoria has passed, we will see exactly how difficult it will be to make a just peace work. Regardless of whether the cease fire holds, the NATO bombing campaign has made stabilization of the Balkan conflict significantly more difficult for years to come. It is also transparently clear that the primary victims of NATO's intervention have been those whom NATO was purportedly attempting to assist. NATO Supreme Commander Wesley Clark once told reporters that the mass deportations from Kosovo and the violence that accompanied them was

"entirely predictable" once the NATO air strikes began. He was right about that, but the NATO publicity line soon changed and his public relations handlers have told him to change his tune.

So called "ethnic cleansing" and the crimes that have accompanied it are the direct and predictable result of attempting to redraw Balkan national boundaries along ethnic lines. Germany's former Chancellor Helmut Kohl bears much of the responsibility for setting off the present debacle. Germany underwrote establishing independent countries of Slovenia and Croatia back in the late 1980s as a means of extending German economic and geopolitical interests in the Balkans. But regardless of what Kohl may have intended at the time, the crisis his maneuver precipitated has long since spun out of his or anyone else's control.

The plight of the hundreds of thousands Albanian refugees is reported daily. Less understood in the West is that there are some 400,000 Serbian refugees from the ethnic cleansing that was set off by the redrawing of national borders. Their number will almost certainly grow by tens or hundreds of thousands of new Serbian refugees from Kosovo in the months ahead.

If you care about justice for ethnic Albanians and for Serbians, the way forward is to: Stabilize national and regional borders; prevent new fighting or persecution by any of the parties involved, particularly the KLA; demand some responsible reporting for a change from much of the major news media of the United States; and de-politicize accusations of war crimes and instead work to identify and bring to justice the perpetrators of particular crimes.

Here in the U.S. Congress, the time has come to re-examine the administration's claims about "infrastructure warfare," "information warfare," and the latest buzz word from the RAND Corporation, "Netwar." These deserve close scrutiny because of their cost, their questionable legality under international treaties and U.S. law, and their use as a rationale for expansion of National Security State powers aimed at the people of the United States itself. Congress could begin by asking the administration how it has come to pass that what a Presidential commission terms a terrorist crime has now become an established part of U.S. military doctrine and target selection practices in the Balkans and in Iraq.

There is much more to do, but I must close now. Thank you for your time and your patience with my talk.

FOOTNOTES

¹President's Commission on Critical Infrastructure Protection, *Report Summary*, (March 1998 summation of PCCIP's *Critical Foundations* study), <http://www.pccip.gov/summary.html>, downloaded June 7, 1999.

²President's Commission on Critical Infrastructure Protection, "Commissioner Brenton C. Greene," (n.d.) <http://www.pccip.gov/greene.html> and Information Warfare Research Center, "Organization: Infrastructure Policy Directorate, Office of the Undersecretary of Defense (Policy)" <http://www.terrorism.com/infowar/j6kdefense.html>, both downloaded June 7, 1999.

³Human Rights Watch, *Needless Deaths in the Gulf War: Civilian Casualties during the Air Campaign and Violations of the Laws of War*, New York: Middle East Watch, 1991, p.32-33, "Terror and Morale Attacks."

⁴For a useful summary of this evolution and specific provisions, see *Ibid*, pp. 26-64. "The Legal Regime Governing the Conduct of Air Warfare."

⁵John Mueller and Karl Mueller, "Sanctions of Mass Destruction," *Foreign Affairs*, May-June 1999, p. 49.

⁶For example, see *USAF Intelligence Targeting Study Guide*, (unclassified), Air Force pamphlet 14-210, 1 February 1998: